

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 12, 2022

Lyle W. Cayce
Clerk

No. 21-50851
CONSOLIDATED WITH
No. 21-50852
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE LUIS ALDABA-ROMAN,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-368-1
USDC No. 4:21-CR-392-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Jose Luis Aldaba-Roman appeals his conviction and sentence for illegal reentry after deportation, as well as the revocation of the term of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50851
c/w No. 21-50852

supervised release he was serving at the time of the offense. He argues that 8 U.S.C. § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum of two years of imprisonment and one year of supervised release based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Because Aldaba-Roman does not address the validity of the revocation or the revocation sentence, he has abandoned any challenge to them. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Aldaba-Roman has filed an unopposed motion for summary disposition and a letter brief correctly conceding that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). He explains that he has raised the issue only to preserve it for possible further review. Accordingly, because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Aldaba-Roman's motion is GRANTED, and the district court's judgments are AFFIRMED.